Nos. 83-1321, 83-1432, 83-1433, 83-1442, 83-1443 and 83-1618

Office Supreme Court, U.S
FILED
JUN 13 1984
ALEXANDER L. STEVAS
CLERK

IN THE

Supreme Court of the United States

OCTOBER TERM, 1983

NORTHWEST PIPELINE CORPORATION, *et al.*,
Petitioners,

v.

PHILLIPS PETROLEUM COMPANY, *et al.*,
Respondents.

On Petitions for a Writ of Certiorari to the United States Court of Appeals for the Fifth Circuit

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SUPPLEMENTAL MEMORANDUM OF THE PLA RESPONDENTS

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June 13, 1984

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SUPPLEMENTAL MEMORANDUM OF THE PLA RESPONDENTS

The PLA respondents respectfully submit this Supplemental Memorandum [1] commenting upon the settlements and proposed settlements that have been entered into in the proceedings underlying the case before this Court.

As the PLA respondents noted in their Brief in Opposition of May 11, 1984, at page 26 & n.35, respondent Phillips Petroleum Company has entered into a final and complete settlement with petitioner Northwest Pipeline

[1] This Supplemental Memorandum is filed pursuant to the Court's letter of May 31, 1984, and Rule 22.6 of the Rules of this Court. A list of the PLA respondents and their corporate parents, subsidiaries and affiliates appears at pages ii to viii of the Brief in Opposition of the PLA Respondents.

Corporation. This settlement has already received the approval of the Federal Energy Regulatory Commission, which has terminated with prejudice the proceedings as to Phillips. Docket Nos. CP74-314, *et al.*, Order Approving Settlement Agreement (Nov. 23, 1983). The Northwest-Phillips settlement, which covers the majority of the PLA gas production, governs the determination of the overriding royalty with respect to production from and after October 1, 1982. In addition, Phillips has a contingent refund liability of $30 million,[2] payable only if this Court, or the Fifth Circuit, issues "a final, non-appealable order determining that the overriding royalties paid to Phillips under PLA-5 for the period September 25, 1980 to October 1, 1982, were subject to the regulatory jurisdiction of the Commission." Settlement Agreement ¶ VII. In the event this Court denies certiorari, or affirms the decision below, no refund is payable.

Getty Oil Company, another PLA respondent, has also entered into a final settlement with Northwest, on similar terms. If its lease-sale agreement is ultimately held to be jurisdictional, Getty would make a refund to Northwest of approximately $2 million; otherwise no refund is payable. The Northwest-Getty settlement has also received final Commission approval. Docket Nos. CP74-314, *et al.*, Order Approving Settlement Agreement (Mar. 30, 1984). Neither the Phillips settlement nor the Getty settlement was opposed by Northwest's customers or the relevant state commissions.

On May 18, 1984, subsequent to the filing of the Brief in Opposition of the PLA Respondents, petitioner El Paso Natural Gas Company and respondents Tenneco

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[2] This total is a fraction of the refunds initially sought. The Commission Staff estimated the potential refund liability of Phillips for the period February 1, 1974 to March 31, 1983, at $174 million. Docket Nos. CP74-314, *et al.*, Initial Comments of the Commission Staff on Offer of Settlement at 1 (June 9, 1983).

Oil Company and Conoco Inc. filed a proposed settlement with the Commission in these proceedings, which they characterized as "a full, fair, final and reasonable resolution of such proceedings as they affect El Paso, Tenneco Oil and Conoco." Docket Nos. CP74-314, *et al.*, Offer of Settlement and Joint Request for Approval of Stipulation of Settlement and Agreement at 1 (May 18, 1984). This proposed agreement, which is conditioned on Commission approval, would render this case moot as to a substantial portion of the natural gas production involved in these proceedings.[3] According to the Offer of Settlement, "Although relating to only four of eighteen GLA's at issue . . . , production attributable to these four GLA's constitutes approximately 70 percent of total production on all GLA's and approximately 15 percent of El Paso's total gas supply from the San Juan Basin. Thus, settlement by these parties will resolve as to the great majority of the gas involved . . . all issues as between El Paso, Tenneco Oil and Conoco . . . ." Offer of Settlement at 2. The Offer of Settlement further requests that the Commission direct the filing of a suggestion of mootness with this Court "at such time as the Commission's order approving the Settlement becomes final and no longer subject to judicial review." Offer of Settlement at 43-44.[4]

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[3] The PLA respondents agree with petitioner El Paso Natural Gas Company that this Court is not the appropriate forum in which to argue the merits or fairness of the proposed settlement. *See* Supplemental Memorandum of Petitioner El Paso Natural Gas Company With Respect to Settlements Between the Parties at 4 (June 8, 1974). That determination is plainly for the Commission to make in the first instance, and the question whether this settlement is in the public interest should not affect this Court's decision whether to grant or deny certiorari. The existence of the proposed settlement is nevertheless significant, because of the bearing it has on the continued vitality and potential impact of this controversy.

[4] Appendix B to the Supplemental Memorandum of Petitioner El Paso Natural Gas Company, filed June 8, 1984, similarly notes that "[a]fter Commission approval of the settlement by final order no

Under the proposed El Paso settlement with Tenneco and Conoco, the relationship among these parties is totally restructured. The properties covered by the Tenneco and Conoco GLAs are to be reconveyed by El Paso, with Tenneco and Conoco becoming conventional sellers of natural gas under 20-year gas sales contracts. Offer of Settlement at 15-16. In addition, the two respondent companies have a fixed refund liability of $50 million. Offer of Settlement at 24. Although the terms of the settlement are complex, and the PLA respondents have not had an opportunity to review them in detail, it appears that the payment of this $50 million refund is not contingent on the outcome of the case before this Court. Thus, although petitioners have contended that as much as $1 billion in refunds are at stake with respect to the GLA properties, *see* Joint Reply Brief in Support of Petitions for Writs of Certiorari to the United States Court of Appeals for the Fifth Circuit at 4, and have made the amount of money at issue a principal ground in support of certiorari, El Paso is apparently willing to compromise its claim with respect to approximately 70 percent of the GLA production for $50 million.

Taken together with the other settlements which have been approved to date, the proposed El Paso settlement with Tenneco and Conoco underscores the point made by the PLA respondents in Part II of their Brief in Opposition. These settlements make unmistakably clear that neither the financial viability of the pipelines, nor their ability to operate in the public interest, will be seriously affected by any ruling this Court makes. Since, as the PLA respondents demonstrated in their Brief in Opposition, the petitioners have presented no significant legal or public interest issue warranting this Court's attention,

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longer subject to judicial review, El Paso, Tenneco, and Conoco shall file with the Supreme Court a suggestion of mootness to reflect that a full and final settlement as between these parties has been reached." Supp. Mem. at 7a.

there is plainly no ground for the granting of certiorari in this case.

CONCLUSION

For the reasons stated here, and in their Brief in Opposition, the PLA respondents respectfully renew their request that the petitions for a writ of certiorari be denied.

Respectfully submitted,

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